IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2006

CORAM

THE HONOURABLE MR. JUSTICE P.SATHASIVAM

C.R.P.(PD)No.547 of 2006
& CMP No.5033 of 2006

C.Krishnan .. Petitioner

Vs.

1.Malliga
2.Saridha .. Respondents

Civil Revision Petition under Article 227 of the Constitution of India against the order dated 28.02.2006 made in I.A.No.212 of 2004 in O.S.No.694 of 2000 on the file of District Munsif, Gudiyatham.

For petitioner : Mr.T.Dhanyakumar
For respondents: No appearance

ORDER

The above Civil Revision petition is filed under Article 227 of the Constitution of India against the order of the learned District Munsif, Gudiyatham dated 28.02.2006 made in I.A.No.212 of 2004 in O.S.No.694 of 2000, in and by which, the learned Judge has dismissed the petition filed by the petitioner/defendant under Order 26 Rule 10(A) CPC seeking direction to the first respondent herein/first plaintiff to undergo DNA test to prove the paternity of the child.

2. The learned District Munsif, Gudiyatham, after taking note of the fact that the respondents/plaintiffs filed a suit for partition and maintenance and considering the fact that they had placed seven documents viz., Exs.B1 to B7 in support of their claim, DNA test is not warranted, has dismissed the petition filed by the petitioner herein/defendant. As per the decision of this Court reported in 2005 I Law Weekly 713 (BOMMI AND ANOTHER VS. MUNIRATHINAM), the Court has ample power to order DNA test in order to ascertain fatherhood/motherhood. However it depends upon the facts and circumstances of each case. In the case on hand, as rightly pointed out by the learned District Munsif, Gudiyatham, the plaintiffs having filed the said suit for partition and maintenance and also filed several documents viz., Exs.B1 to B7, it is for them to establish their case during the trial and ultimately it is for the Court to

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give a finding whether the plaintiffs have proved their case. As rightly observed by the Court below, DNA test is not to be conducted as a matter or routine and only in deserving cases such a direction can be issued. Again, as rightly pointed out by the learned District Munsif, Gudiyatham, it is not the suit for declaration of their marital status. Further, if the materials placed on the side of the respondents herein/plaintiffs are not sufficient, it is for the trial Court to dispose of the suit. At this juncture, this Court is not inclined to go into the contents of those documents and give a finding one way or other.

3. On the other hand, on going through the reasons stated in the impugned order of the learned District Munsif, Gudiyatham, I am satisfied that there is no valid ground for interference. As rightly observed by the Court below, considering the relief prayed for, I am of the view that the request for DNA test is not required and it is for the plaintiffs to substantiate their claim by placing acceptable oral and documentary evidence. When such recourse is available, I am of the view that interference with the impugned order is not warranted. The Civil Revision petition fails and the same is dismissed. No costs. Consequently, CMP No.5033 of 2006 is also dismissed.

raa

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The District Munsif, Gudiyatham.

1 CC TO MR.T. DHANYAKUMAR, ADVOCATE SR 52186

CRP PD No.547 of 2006

NA(CO)

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